RAJYA SABHA

Tuesday, the 16th May, 2000/26 Vaisakha, 1922 (Saka)

The House met at eleven of the Clock, **Mr. Chairman** in the Chair.

ORAL ANSWERS TO QUESTIONS

दोषी लोगों के चुनाव लड़ने पर रोक लगाना

*701. श्री रमा शंकर कौशिक:†
प्रो. रामगोपाल यादव:

क्या विधि, न्याय और कंपनी कार्य मंत्री यह बताने की कृपा करेंगे कि:

(क) क्या चुनाव आयोग ने प्रथमदृष्टया दोषी लोगों के चुनाव लड़ने पर रोक लगाने के संबंध में कोई सुझाव दिया है;

(ख) यदि हां, तो क्या सरकार आयोग के इस सुझाव से सहमत है और इसे स्वीकार करती है;

(ग) यदि हां, तो आयोग के उक्त सुझाव को लागू करने के लिए सरकार क्या कदम उठाएगी; और कब तक उठायेगी; और

(घ) यदि नहीं, तो कुख्यात अपराधियों तथा आपराधिक पृष्ठभूमि वाले प्रत्याशियों के चुनाव लड़ने पर रोक लगाने के लिए क्या कदम उठाए जाने का विचार है?

विधि, न्याय और कंपनी कार्य मंत्री (श्री राम जेठमलानी): (क) से (घ) भारत निर्वाचन आयोग ने, निर्वाचन सुधार संबंधी विधि पर सरकार को अपनी सिफारिशों के रूप में अन्य बातों के साथ-साथ, यह सुझाव दिया है कि ऐसा कोई व्यक्ति, जो किसी ऐसे अपराध का अभियुक्त है, जो पांच वर्ष या उससे अधिक के कारावास से दंडनीय है, निरर्हित किया जाना चाहिए भले ही उसका विचारण अभी किया जाना है, परंतु यह तब जब कि सक्षम न्यायालय ने, ऐसे अपराध का संज्ञान लिया हो और उसके विरुद्ध आरोप विरचित किए हों। किन्तु लोक प्रतिनिधित्व अधिनियम की धारा 8 और 8क के विद्यमान उपबंध के अतिरिक्त, भारत के विधि आयोग ने, अपनी 170वीं रिपोर्ट में भी ऐसे ही सुझाव दिए हैं। भारत निर्वाचन आयोग द्वारा तारीख 29 अप्रैल, 2000 को आयोजित राजनीतिक दलों की हाल ही की बैठक की कार्यसूची की मदों में से एक मद "राजनीति का अपराधीकरण" थी। भारत निर्वाचन आयोग ने, सूचित किया है कि दोषसिद्धि के पूर्व निरर्हता के बारे में निर्वाचन आयोग के प्रस्ताव पर बैठक में मिली-जुली प्रतिक्रिया थी और इस मुद्दे पर सर्वसम्मति नहीं हो पाई थी। इसके पहले कि सरकार इस विषय पर कोई अन्य कार्रवाई करे, इस पर सर्वसम्मति हो जाना आवश्यक होगा। तथापि, विधि में ऐसे कतिपय उपबंध पहले से ही

†सभा में यह प्रश्न श्री रमा शंकर कौशिक द्वारा पूछा गया।

विद्यमान हैं, जिनमें कोई व्यक्ति निर्वाचन लड़ने से निरर्हित हो जाएगा यदि वह कतिपय विनिर्दिष्ट अपराधों के लिए दोषसिद्ध ठहराया जाता है। इस संबंध में, लोक प्रतिनिधित्व अधिनियम, 1957 की धारा 8 का निर्देश दिया जा सकता है।

Banning of accused persons from contesting elections

†*701. SHRI RAMA SHANKER KAUSHIK:††
PROF. RAM GOPAL YADAV:

Will the Minister of LAW, JUSTICE AND COMPANY AFFAIRS be pleased to state:

(a) whether the Election Commission has made any suggestion to ban the *prima facie* accused persons from contesting the elections;

(b) if so, whether Government is in agreement with the said suggestion of the Commission and intend to accept the same;

(c) if so, what steps Government would take to implement the said suggestion of the Commission and by when; and

(d) if not, what steps are proposed to be taken to impose ban on the notorious criminals and on the candidates having criminal background from contesting elections?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RAM JETHMALANI): (a) to (d) The Election Commission of India, as part of its recommendations to the Government on reforms of electoral laws, has, *inter alia,* suggested that any person who is accused of any offence that is punishable with imprisonment for five years or more should be disqualified, even when his trial is pending, provided that the competent court of law has taken cognizance of the offence and framed the charges against him. The Law Commission of India in its 170th Report has also made a similar suggestion but in addition to the existing provision in sections 8 and 8A of the Representation of the People Act, 1951. In a recent meeting of political parties convened by the Election Commission of India on 29th April, 2000, "Criminalisation of politics' was one of the items on the agenda. The Election Commission has informed that there was a mixed reaction to the proposal of the Election Commission regarding disqualification before conviction and that there was no consensus on this issue. It would be necessary

†Original notice of the question was received in Hindi.
††The question was actually asked on the floor of the house by Shri Rama Shanker Kaushik.

to evolve a consensus before the Government takes any further initiative in the matter. However, certain provisions already exist in law which would disqualify a person from contesting elections if he is convicted of certain specified offences. Reference in this connection may be invited to section 8 of the Representation of the People Act, 1951.

श्री रमा शंकर कौशिक: श्रीमन् देश की राजनीति में जो पिछले दस-पद्रह वर्षों से अपराधियों की घुसपैठ हुई है, उससे हमारे देश के सभी प्रबुद्धजन और आम जनता चिंताग्रस्त है लेकिन श्रीमन् इसके ऊपर जो विचार मंथन हो रहे हैं और जो विचार सामने आ रहे हैं, चाहे वे चुनाव आयोग के जरिए से आ रहे हों या विधि आयोग की 170वीं रिपोर्ट के जरिए आ रहे हों, वे हमारे देश के लिए बहुत ही खतरनाक हैं और यह जो सुझाव चुनाव आयोग की ओर से इस प्रकार का आया है कि केवल दोष आरोपित हो जाने के बाद ही उसको निहर्रित कर दिया जाए, यह बहुत ही खतरनाक है। श्रीमन् हमारे यहां प्रासीक्यूशन की जो विश्वसनीयता है, वह सबको मालूम है, जग जाहिर है। ऐसी स्थिति में भी माननीय मंत्री जी ने जो उत्तर दिया है, वह यह दिया है कि "क्योंकि सहमति नहीं हो पाई, इसलिए इसको अभी हम स्वीकार नहीं कर रहे।" मैं माननीय मंत्री जी से जानना चाहता हूं कि क्या वह स्पष्ट रूप से इस बात को कहेंगे कि इस प्रकार के सुझावों को नकारा जाएगा? लेकिन साथ ही मैं यह भी जानना चाहता हूं कि माननीय मंत्री जी उसके लिए क्या अन्य कोई विचार कर रहे हैं जिससे कि हमारे देश की राजनीति में जो अपराधियों की घुसपैठ हुई है, वह समाप्त हो सके?

SHRI RAM JETHMALANI: Sir, I can assure the hon. Member that this matter is very seriously engaging the attention of the Government and certainly, my attention, both as the Law Minister and as a citizen of this country. But, Sir, recently, on 29th April, a meeting with political parties was held by the Election Commission. There, we found that there was not much of a consensus. It is still a disturbing factor. We are trying to evolve a consensus. We are certainly, very seriously, considering the viewpoint which has been put forth by the hon. Member.

श्री रमा शंकर कौशिक: श्रीमन्, मैं तो स्पष्ट रूप से यह जानना चाहता हूं कि इस प्रकार के सुझावों को सरकार मानने से हमेशा इन्कार करेगी क्योंकि यह बहुत की खतरनाक सुझाव हैं, लेकिन इसके साथ ही कौन से ऐसे सुझाव हैं जिनके ऊपर सरकार विचार कर रही है ताकि अपराधियों की घुसपैठ न हो सके?

SHRI RAM JETHMALANI: Sir, it is a very complex question. It is not as simple as the hon. Member wishes to make it out. After all, prosecutions can be filed against somebody which are totally false. In my experience as a criminal lawyer—and there are many lawyers here who know—I have seen

that sometimes, cases filed against the opponents turn out to be totally false, though on the face of it, they look very plausible. The whole question that arises is, should we impose this disability? It is a very serious disability to be imposed on a citizen to prevent him from contesting elections and going to the people.

It is a very important disability. Should it be imposed before a man's guilt has been proved? Now, after all those who framed the Representation of the People Act, 1951 applied their mind to this problem. They thought that even a conviction for an offence is not enough. They said that you must be convicted of an offence for which you have been sentenced to two years imprisonment before this will amount to disqualification. After that other sub-sections have been added to the Representation of People Act. For example, if you are convicted of hoarding offences, economic offences, then the disqualification starts immediately, so on and so forth. All that has been done and the period of two years or six months imprisonment is not necessary in some offences. Sir, it is a very serious question on which a very serious thought is necessary. I do not think the Government will be acting wisely in adopting an initiative without having widespread consultations with all the political parties and other elements involved.

श्री रमा शंकर कौशिक: सभापति महोदय, माननीय मंत्री जी ने.....

MR. CHAIRMAN: You have already asked two supplementaries.

श्री रमा शंकर कौशिक: महोदय, मैं वही प्रश्न पूछ रहा हूं क्योंकि उसका उत्तर नहीं आ रहा है। मेरा निवेदन यह है कि माननीय मंत्री जी एक बात तो यह स्पष्ट करें कि क्या इस बात की वे घोषणा नहीं कर सकते कि इस प्रकार के जो सुझाव आएंगे, सरकार उनको नकारेगी? क्योंकि माननीय मंत्री जी बराबर यह कह रहे हैं कि हम इस पर सब लोगों की सहमति हासिल करने का प्रयास कर रहे हैं। मैं माननीय मंत्री जी से जानना चाहता हूं कि क्या सरकार इस प्रकार के सुझावों को न मानने की स्पष्ट घोषणा करेगी?

श्री सभापति: आपने तीन बार पूछा और उन्होंने जवाब दे दिया। ज्यादा जवाब मांगना ठीक नहीं है।

SHRI PRANAB MUKHERJEE: Sir, I would like to tell the hon. Minister that it is true that recently the Election Commission called a meeting and there the political parties expressed their views. There were divergent views and there was no consensus. Some political parties said that even before conviction in the trial court when the charges have been framed, they should

be disqualified. Naturally many political parties, including some very important political parties which have widespread influence, suggested, no, the existing arrangement should be improved. Otherwise, a situation may arise—of course, I would not like to mention the name—which is there in one of our neighbouring countries where there was a law called the Electoral Bodies Disqualification Order, and under this Order some of the very prominent politicians of that country were debarred from contesting elections. Surely, in a matured democracy like India, we would not like to have that. On the other hand, the criminalisation of politics is also a major issue. Therefore, as the Law Minister has himself taken some initiatives in this respect of certain aspects of electoral reforms—it need not necessarily be done immediately—after sometime he can also take some initiative from the Government side. Instead of having a jamboree meeting where a man having one representative or no representative in legislature can also give his opinion which really does not matter, there should be an in-depth consultation process. I would also like to know about one thing more from the hon. Law Minister because he is also an eminent lawyer, he can clarify it better. There is one anomaly in the present law. For example, somebody is convicted, say, for a period of seven years, but he is disqualified only for a period of six years that means theoretically it may happen that in the 7th year of his imprisonment he can contest from the prison. I would like to know whether this is a correct legal position or my understanding of the legal position is wrong.

SHRI RAM JETHMALANI: Sir, for a change Mr. Mukherjee is wrong because disqualification commences from the date of release.

श्रीमती सुषमा स्वराज: सभापति जी, अपराधी लोग चुनाव न लड़ सकें, इसके लिए चुनाव आयोग ने कुछ हिदायतें जारी की हैं। उन्होंने तय किया है कि हर कैंडिडेट को, हर उम्मीदवार को एक ऐफिडेविट में लिख कर यह बताना पड़ेगा कि उसके ऊपर कोई केस नहीं है लेकिन ये हिदायतें केवल इंस्ट्रक्शन्स के रूप में हैं, लॉ की सैंक्टिटी इनको नहीं है। मैं लॉ मिनिस्टर से यह जानना चाहूंगी कि क्या इन हिदायतों को और ज्यादा प्रभावी बनाने के लिए वे इनको लॉ का रूप देने की कोशिश करेंगे ताकि इन्हें स्टैट्यूटरी बैकिंग मिल सके और ये ज्यादा प्रभावी ढंग से अमल में आ सकें?

SHRI RAM JETHMALANI: That is precisely the question with which we are concerned at the moment. I know, these are recommendations made by very eminent bodies. The whole problem is, should we convert them immediately into law? I can assure the House that if I can develop enough consensus, to which myself and Pranabji are parties, that will be enough for me to proceed further.

SHRI R. MARGABANDU: Will the hon. Minister clarify that *prima facie* does not make a person guilty? It is only on final adjudication, the guilt is established and that alone will attract disqualification; till such time, suspension of a sentence or sentence of a conviction makes no difference. Will the Central Government address the Election Commission to that effect?

SHRI RAM JETHMALANI: This matter is provided for by the law. If there is a conviction and a sentence and if an appeal is filed, the disqualification does not start till the appeal is disposed of and the conviction is maintained and the sentence is served out.

SHRI ADHIK SHIRODKAR: The cardinal principle is that a man is presumed to be innocent till he is found guilty. Could the hon. Minister consider a suggestion that if a person, who is elected, is already facing prosecution for an offence of a trival nature, his case should be taken on a priority basis by a special court and the decision should be given as early as possible so that in case he is convicted, the necessary inevitable action can be taken?

SHRI RAM JETHMALANI: It is a very good suggestion that the hon. Member has made. In fact, I, myself, have been pleading for this. We have made applications to courts that the cases of those people, who offer themselves for election, must be speedily settled and their cases must be tried early. But I do not think we have received adequate response from the courts but, maybe, the hon. Member is right that we might make some statutory provision in that direction.

श्री संजय निरुपम: महोदय, मैं माननीय लॉ मिनिस्टर से यह पूछना चाहता हूं कि जो एक्यूज्ड परसन्स हैं, उनके लिए हमारे यहां इस तरह के बंधन हैं कि यदि कोई व्यक्ति क्रिमनल है, यह साबित हो जाता है तो उसको 6 साल तक चुनाव लड़ने से रोका जा सकता है। हमारे आर.पी.आई. एक्ट 1951 में यह साफ-साफ प्रावधान है कि उसके वोटिंग राइट को सीज कर दिया जाए। इसका एक उदाहरण हमारे सामने है, हमारे नेता श्री बाला साहब ठाकरे जी का वोटिंग राइट किसी और केस में सीज किया गया था। मैंने एक बार माननीय मंत्री जी से प्रश्न किया था कि क्या मंत्री जी हमें बताएंगे कि वोटिंग राइट छीनना किसी व्यक्ति की नागरिकता के अधिकार को छीन लेना है, अगर ऐसा है तो क्या इससे जुड़ा हुआ प्रावधान जो आर.पी.आई. एक्ट में है उसमें किसी अमेंडमेंट का प्रस्ताव रख रहे हैं? माननीय मंत्री जी ने मुझे जवाब दिया था "Some disqualifications are harsh and being looked into." मैं माननीय कानून मंत्री जी से यह जानना चाहता हूं कि हमारे आर.पी.आई. एक्ट-51 में जो मतदान का अधिकार सीज करने का प्रावधान है, क्या सरकार के मन में उसमें बदलाव लाने की कोई योजना है या बदलाव की कोई व्यवस्था करने का कोई विचार है?

SHRI RAM JETHMALANI: There is a very sensible and a significant difference between the right to vote and the right to represent a number of voters, say, a million, in a constituency. We recognise that difference. Sir, maybe, the disqualification against the right to vote may have to be modified in future and when we consider the entire electoral reforms, this meausre would be very, very seriously considered and perhaps, given effect to.

DR. RAJA RAMANNA: The point which I am going to make is not a legal point by any means, but, as a voter, who sees, at the time of election, how mafia groups get together. Sir, among the mafia groups you will find people with multiple convictions; yes, they are out of jail, but everybody knows about their history and you still allow them to vote and bring the voting procedure into disgrace. I do not know as to how this can be avoided because once he is out of jail, he is a free man and he can vote. But he is a criminal, with multiple convictions. We all know that. The whole community knows about the mafia culture, bomb culture that is there, especially at the time of voting. This also has to be taken into account. But when it comes to a case of murder, the whole society knows and you say that the case has not been cleared! You know that to complete a trial, in our system, in a case of murder, the court, sometimes, takes five years; six years. So, what happens is, that man goes and votes. Of course, I know that before he is branded as a criminal, he cannot vote, is a wrong thing. But something has to be done about it.

SHRI RAM JETHMALANI: Sir, even I see the dilemma that looks odd. It also looks odd that you should deprive somebody of the right to vote. It also looks odd that such a person should go and vote. Therefore, I am looking for some wisdom from this House and some advice from my learned friend as to what he wants us to do. I am abreast of this paradox; we are trying to resolve it and we will, probably, resolve it. But, Sir, the problem is not as serious as it is made out to be. After all, if it is known about a particular candidate, or a particular person, that he is a habitual offender, and if the whole community knows it, then surely the leaders of political parties know about this. Why are the leaders of political parties encouraging such people? Why do they give them tickets to contest elections? Instead of looking for legal changes all the time, why can't the political parties maintain some kind of discipline in this country?

SHRI NILOTPAL BASU: Sir, while one appreciates the pro-active role taken by the Election Commission to bring about important changes in the

electoral laws of the country, particularly, addressing the question of criminalisation of politics, and the Government responding on that, one would also like to know whether the Government is showing pro-activism on a number of legislative actions. I suppose, the Government had constituted a Committee, under the chairmanship of Shri Indrajit Gupta, for suggesting changes in the electoral laws. We have not heard anything from the Government as to what happened to that Committee's report, which has been lying with the Government for a year or so. What is the opinion of the Committee? What are the salient features of the Report? The Law Minister is, particularly, placing the onus of cleansing politics of criminal elements on political parties. I suppose, that Committee might have also made certain recommendations in this regard. Why does the Government not share the salient features of the Report and the response of the Government on that Report?

SHRI RAM JETHMALANI: Sir, the Report of this very distinguished Committee was considered by the Law Commission itself. I have received this document from the Law Commission. This requires to be elaborately studied, intensively studied, before the Goverment makes up its mind. As I have said, we have not been able to develop a consensus even on simple issues that are involved in this Commission's report. Please have patience; bear with us. We have great respect for the recommendations of the Indrajit Gupta Committee. They are well considered by the Election Commission ... (*Interruptions*)

SHRI NILOTPAL BASU: But, will you place those papers, or, at least, the executive summary of those papers on the Table of the House so that the House can also apply its mind on that?

SHRI RAM JETHMALANI: Sir, that report was rendered long before I became the Minister. I don't know as to why this anxiety has arisen suddenly now.

SHRI NILOTPAL BASU: Because we are discussing this question now; precisely because of that.

SHRI RAM JETHMALANI: I am quite willing to put it before the House. Sir, I will produce it before the House. In fact, I will have it distributed to every Member of the House.

SHRI RANGANATH MISRA: Sir, I will point out one issue related to the Representation of the People Act. A person who is under trial and has not

been adjudged guilty, his right to vote is taken away as per the law, as it is. A person who is on bail after his conviction is given the right to vote. This discrepancy should be removed. What is happening is, under section 151 of the Cr. P.C, the police is empowered to arrest. In Andhra Pradesh, 25 people were taken into custody, a day before the date of polling. They were put in jail and their right to vote was taken away. This should not happen.

SHRI RAM JETHMALANI: Sir, this is a matter which can be resolved by administrative directions to the police force.

SHRI RANGANATH MISRA: No, Mr. Minister. The Supreme Court has followed your law and has interpreted the provision this way.

SHRI RAM JETHMALANI: I will look into this. Frankly speaking, I am not aware of the Supreme Court's decision.

SHRI S. VIDUTHALAI VIRUMBI: Sir, in response to the question raised by hon. Pranabji, the Hon. Minister has replied that the date of disqualification commences from the date of release. But the Election Commission has sought support from all political parties. It has sent some papers in which it has been stated that if anybody is convicted for seven years — they have mentioned about some rape case also — and he is disqualified for six years; he files his nomination in the seventh year from the jail itself.

So, the Election Commission has sought support from all the political parties in this regard. If anybody is convicted on criminal charges the disqualification period should be the convicted period plus six years. For this purpose, the Election Commission has sought support from the political parties. Sir, I feel the opinion of the Election Commission regarding this particular section of the Act is totally different from that of the observations made by the hon. Minister. Therefore, I want a further clarification on this aspect. I would like to know whether the disqualification starts after the release or its starts from the date on which a person is imprisoned or whether there is any definite period. If it is so, then I would like to suggest that the law has to be amended in such a way that disqualification should start after the conviction period is over. Therefore, this aspect should be made clear today itself.

SHRI RAM JETHMALANI: Sir, I am sorry, I do not appreciate what the hon. Member has said. I have already said that the law makes provision for this in the Representation of the People Act. There is a provision that if you are sentenced to imprisonment, you must serve out the imprisonment before the disqualification commences. Therefore, the six years or whatever

the disqualification period is, will be in addition to the sentence which you will serve out. It will never expire during the period when you are in jail.

SHRI KULDIP NAYYAR: Sir, I want to ask one question: Is the Minister aware that there is a law in the State of Jammu and Kashmir that a person who is found *prima facie* guilty in an enquiry ordered by the Government is not entitled to contest the election? I know that Shri Bakhshi Ghulam Mohammad was not allowed to contest the election. I would like the hon. Minister to kindly check up the reason.

SHRI RAM JETHMALANI: Sir, I am sorry, I do not claim proficiency in Jammu & Kashmir law. But since the hon. Member has drawn my attention to it, I will certainly look into it.

SHRI K.M. SAIFULLAH: Sir, the hon. Minister has rightly, legally stated that just because there is a *prima facie* case and charges are framed against a person or a private complaint is filed against a person, we cannot allow him not to exercise vote or not to contest the elections. But I want to make a suggestion in this regard to the hon. Minister. I want to suggest that if a person is convicted in the lower court, even if the sentence is suspended till it is acquitted back by the Appellate court, he should be barred from exercising the vote. Can we make such a law to speed up the trials?

SHRI RAM JETHMALANI: Sir, my own view is that, that is the correct interpretation of the existing law. But some years ago, the Supreme Court arrived at a contrary conclusion and that has not yet been upset by anybody. Therefore, I agree that an amendment in the law is necessary in this respect.

Advanced cargo transfer system at Vishakhapatnam Port

*702. DR. Y. LAKSHMI PRASAD: Will the Minister of SURFACE TRANSPORT be pleased to state:

(a) whether the Vishakhapatnam Port Trust proposed to invest substantially in advanced cargo transfer system;

(b) is so, the details thereof; and

(c) the action proposed to revamp the ore handling plant of the VPT which is causing problems?

THE MINISTER OF SURFACE TRANSPORT (SHRI RAJNATH SINGH): (a) and (b) Yes, Sir, The Vishakhapatnam Port Trust has undertaken a programme for modernisation of equipments in order to optimise its cargo